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09/382,374	08/24/1999	JEFFRY JOVAN PHILYAW	PHLY-24.736	5135
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HOWISON & ARNOTT, L.L.P			DURAN, ARTHUR D	
P.O. BOX 741715			ART UNIT	
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			3622	

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/382,374

Applicant(s)

PHILYAW ET AL.

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-7, 9-14 have been examined.

Response to Amendment

2. The Amendment filed on 5/30/06 is insufficient to overcome the prior rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1, 5, 7, 9-11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tognazzini (5,708,478) in view of Picco (6,029,045) in view of Harvey (5,887,243).

Claim 1, 10: Tognazzini discloses a method, system for launching an advertisement on a computer, comprising:

a computer having an audio input interface and a display (Fig. 3; col 7, lines 50-60),
an audio output acoustically coupled from a receiver of a broadcast source to said audio input interface for providing an audio signal having encoded therein advertisement information (col 7, lines 50-60; col 3, lines 35-50; col 3, line 63-col 4, line 2),

and a computer program operable on said computer and responsive to said audio signal output from said receiver of said broadcast source to allow said computer program to be controlled by said advertisement information (col 3, lines 35-50; col 3, line 63-col 4, line 2; col 5, lines 25-45; col 4, lines 8-11).

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Tognazzini further discloses a program for accessing advertising information coupled from said receiver of said broadcast source, means for decoding advertising information encoded in said audio signal (col 3, line 65-col 4, line 2),

and means for launching said advertisement on said display of said computer (col 4, lines 5-8; col 16, lines 6-10; col 3, lines 14-18).

Tognazzini further discloses an audio signal and a coupling device (col 3, lines 39-47).

Tognazzini does not explicitly disclose control information that is sent to the user computer for controlling whether to display the advertising information.

However, Picco discloses sending the advertising information with the control information in the broadcast wherein the control information controls whether to display that advertising information:

“(13) Thus, in addition to the conventional live feeds and local content, the combiner may combine a plurality of user-specific information in the satellite signal including a private data identification code that permits the set-top box in accordance with the invention to locate the private data being transmitted through the satellite in accordance with the invention. The private data may include the compressed local content, as described above, which may be transmitted to each set-top box using several different transmission strategies, as described below. This local content may not be transmitted in real-time in that the local content is not immediately viewed by the user of the set-top box since the set-top box inserts the local content into the satellite signals as needed. As described above, the private data may also include command and control data that instructs the processor within the set-top box how to insert the local content into the satellite data streams” (col 8, lines 21-40).

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Picco further discloses that the local content can be advertisements:

“(8) For example, a user may be looking to buy a new car, and may select the preferences that are set so that the set-top box for the user stores only local content (i.e., advertisements) about automobiles. Then, when a local content space within the compressed digital data stream is identified, an automobile advertisement is shown to the user. Now, the uplink facility 102 in accordance with the invention will be described in more detail” (col 6, lines 34-41).

Picco further discloses utilizing a variety of communication methods, including broadcasting audio content:

“(2) This invention relates generally to a system and method for inserting individualized data content into a compressed digital data stream and in particular to a system and method for inserting individualized data content into a compressed digital video and audio data stream being transmitted to a plurality of viewers by any type of broadcast system, such as a satellite-based, cable-based, wireless cable (i.e., microwave) or terrestrial broadcast system” (col 1, lines 5-12).

Picco further discloses that a computer network can be utilized, the Internet and computers:

“In particular, the system may be used with a cable-based digital data broadcast system, a satellite or cable-based analog data broadcast system, a digital data broadcast system that uses a computer network, such as the Internet, a wireless cable (i.e., microwave) broadcast system, or a terrestrial broadcast system to communicate the digital data to the viewer” (col 14, lines 57-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Picco’s advertiser control of advertising information sent with

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advertising information to Tognazzini's advertiser provided information. One would have been motivated to do this in order to allow the advertiser better control of advertisement display in order to more effectively reach a user.

Additionally, Tognazzini further discloses advertiser information from a broadcast being received by a computer and then being displayed (Fig. 1; Fig. 2; Fig. 7).

Harvey further discloses real time control of a computer based on broadcast transmissions including control of content or display information:

"A unified system of programming communication. The system encompasses the prior art (television, radio, broadcast hardcopy, computer communications, etc.) and new user specific mass media. Within the unified system, parallel processing computer systems, each having an input (e.g., 77) controlling a plurality of computers (e.g., 205), generate and output user information at receiver stations. Under broadcast control, local computers (73, 205), combine user information selectively into prior art communications to exhibit personalized mass media programming at video monitors (202), speakers (263), printers (221), etc (Abstract).

(10) To unlock this potential fully requires means and methods for combining and controlling receiver systems that are now separate--television and computers, radio and computers, broadcast print and computers, television and computers and broadcast print, etc (col 2, lines 5-10).

[Claim 34]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a

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broadcast signal, said method further comprising the step of controlling a selective transfer device to input to a computer control signals detected in said at least one specific channel designated by said processed datum.

[Claim 35]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a computer to respond to control signals detected in said at least one specific channel designated by said processed datum.

[Claim 36]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a television monitor to display one of video and audio contained in said at least one specific channel designated by said processed datum.

(1359) Immediately, said European master network station causes ultimate receiver stations to obscure all video information of said master transmission and display only locally generated information and causes all national intermediate station computers, 73, and ultimate receiver station microcomputers, 205, that are combined to the transmission of said master station to commence receiving SPAM information embedded in the full frame video of said master transmission. Said master station transmits SPAM information that is addressed to URS microcomputers, 205, that causes said microcomputers, 205, to commence combining and displaying locally titles information (while

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sound is emitted of transmitted audio theme music) in the fashion described in "CONTROLLING COMPUTER-BASED COMBINED MEDIA OPERATIONS." Then said master station transmits SPAM information that is addressed to ITS computers, 73, of intermediate stations that are national stations and to URS microcomputers, 205, which SPAM information causes decoder apparatus to commence receiving SPAM information embedded in the full frame video of said master transmission at each national intermediate station and each ultimate receiver station where a microcomputer, 205, is combined to the computer system of said master transmission" (col 284, lines 30-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Tognazzini's display of advertisement information related to broadcasts can be displayed in real time and control information can be utilized in real time. One would have been motivated to do this in order to better utilize broadcast and computer medium for presenting of advertising or information of interest to the user.

Claim 5: Tognazzini and Picco disclose the system of claim 1, and Tognazzini further discloses that said audio output comprises:
a broadcast or recorded program including said advertisement encoded in an audio component of said program (col 3, line 65-col 4, line 2; col 1, line 19-26).

Claim 7, 13: Tognazzini and Picco disclose the system, method of claim 1, 10 and Tognazzini further discloses that said advertisement includes:
information selected from the group consisting of product identity, product description, manufacturer identity, advertising messages or program execution commands (col 4, lines 1-14).

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Claim 9: Tognazzini and Picco disclose the system of claim 8, and Tognazzini further discloses that said means for launching comprises:

Means for coupling said computer to said display (col 16, lines 6-10; col 3, lines 14-18).

Claim 11: Tognazzini and Picco disclose the method of claim 10, and Tognazzini further discloses providing an audio input interface for receiving the audio signal output from the receiver of the broadcast source,

Converting the received audio signal to a form readable by the computer,

And transmitting converted audio signal information to the computer (col 3, line 63-col 4, line 2; col 5, lines 25-35; col 6, lines 1-10).

4. Claim 2, 3, 4, 6, 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tognazzini (5,708,478) in view of Picco (6,029,045) in view of Harvey (5,887,243) in further view of McKiel (5,133,011).

Claim 2, 3, 12: Tognazzini and Picco discloses the system of claim 1.

Tognazzini further discloses that said audio input interface comprises:
a circuit for converting said audio signal output coupled from said receiver of said broadcast source into a form for processing by said computer (col 3, line 63-col 4, line 2; col 5, lines 25-35; col 6, lines 1-10).

Tognazzini does not explicitly disclose that the form is digital.

However, McKiel discloses converting an audio signal into digital form (col 4, lines 25-33).

McKiel further discloses an audio circuit having an input coupled to a microphone and an output (Fig. 1), and an A/D converter coupled to said output wherein an output of said A/D converter is coupled to a system bus of said computer (col 4, lines 25-33).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add McKiel's analog to digital converter to Tognazzini's computer that receives an audio signal's analyzes, processes it, and performs computer functions and analysis on it. One would have been motivated to do this because a computer can manipulate data more effectively when the data is in digital form that a computer needs to perform functions with.

Claim 4, 6, 14: Tognazzini and Picco disclose the system, method of claim 10.

Tognazzini further discloses that said audio signal output comprises:

a sound effect selected from the group consisting of superaudible tones (col 5, lines 57-61; col 10, lines 5-9).

Tognazzini does not explicitly disclose audible tones, clapping, whistling.

However, McKiel discloses that said audio signal output can be a sound effect such as audible tones, clapping, whistling, or a combination thereof (col 1, lines 20-29).

Tognazzini does not explicitly disclose an audible signal for initiating execution by said program in said computer.

However, McKiel discloses an audible signal for initiating execution by said program in said computer (col 1, lines 20-29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add McKiel's audible signals to Tognazzini's computer that receives

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an audio signal, analyzes it, and performs computer functions. One would have been motivated to do this because an audible signal is a form of audio signal and audible signals are a form of broadcast useful in some applications or systems.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 9-14 have been considered but are not found persuasive.

On page 6 of the Applicant's Remarks dated 5/30/2006, Applicant states that, "neither reference, taken singularly or in combination, disclose the advertising and control information which are sent in conjunction with each other such that the advertising information can be displayed at substantially the same time that the control information was received."

On page 7, Applicant states that the prior art does not disclose, "As opposed to actually displaying the broadcast information at substantially the same time as the control information was received."

However, Picco discloses that live feeds, control information and local information can be combined in a real-time broadcast signal (Fig. 5 and below citation):

"FIG. 5 is a block diagram of the live feeds, local content and commands being multiplexed together in accordance with the invention" (col 4, lines 25-29).

Picco further discloses that the content that is live feed/real-time broadcast can be advertisements:

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“(3). . . At the head-end station 32, the operator of the satellite-based system 30 may insert content, such as advertisements, into the satellite signal. . .this content is the same for all of the households that receive the satellite signal (col 5, lines 17-25).

Picco further discloses that the control information can be control information for the broadcast content that the control information was broadcast at the same time with and that the broadcast content can be a live/real-time broadcast content:

“(20) Another common feature of the various techniques for downloading the local content and private data in accordance with the invention is the manner in which the command and control data is downloaded to the set-top box. In particular, the command and control data may be downloaded in real-time with the programming data streams (i.e., the live feeds signals) so that the set-top box may determine, based on the command and control data, where to insert the stored local content as well as what local content should be inserted into a particular spot in a particular programming data stream. This information may include the content profile data which is described above. The command and control data may also include a data structure containing data about the characteristics of a particular household which may be used by the set-top box to determine which local content is actually going to be stored by the set-top box. This user characteristics data is not downloaded in real-time and may be generated based on the data about the household that was received by the agent 150 which was described above. For example, the control data may indicate that an automobile advertisement should be inserted in a particular spot in the

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programming data stream. . .” (col 9, line 60-col 10, line 15).

Note that this citation preceding discloses that the control information is broadcast with a live/real-time broadcast content and that the control information can include control information relevant to the broadcast content such as where other content is to be placed into the live broadcast or what type of content can be placed into the live broadcast.

Additionally, Harvey discloses that the control information is broadcast with a live/real-time broadcast content and that the control information can include control information relevant to the broadcast content:

“[Claim] 37. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a video recorder/player to one of record and play one of video and audio contained in said at least one specific channel designated by said processed datum.

(911) In example #10, a particular program originating studio transmits the commercial of program unit Q in a network transmission and controls a plurality of intermediate transmission stations each of which controls, in turn, a plurality of subscriber stations that are ultimate receiver stations.

(801) So far this disclosure has described an intermediate transmission station that transmits conventional television programming; however, the intermediate station automating concepts of the present invention apply to all forms of electronically transmitted programming. The station of FIG. 6 can

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process and transmit radio programming in the fashions of the above television programming by adding radio transmission and audio recorder/player means, each with associated radio decoder means as shown in FIG. 2B, wherever television means are shown in FIG. 6, all with similar control means to that shown in FIG. 6 and by processing radio programming with appropriately embedded signals according to the same processing and transmitting methods described above. Likewise, said station can transmit broadcast print and data communications programming by adding appropriate transmission and recorder/player means and decoder/detector means with control means and using the same processing and transmitting methods. This example has described methods at a multi-channel intermediate transmission station; the methods are also applicable in a station that transmits only a single channel of television, radio, broadcast print or data" (col 179, lines 15-39).

Also, on page 7, Applicant states, "However, this control signal must be received on a different channel than the advertising information, and, therefore, this information cannot be transmitted in the same signal. Therefore, Applicant believes that Harvey falls short on providing the support necessary to overcome the deficiencies".

However, the above citations from Harvey show that the content and control information that is broadcast can be for a single channel system. Also, Harvey discloses that the content and control information that is broadcast can be for content and for control information such as recording the content that is broadcast.

Hence, the combination of the prior art discloses and renders obvious advertising and control information which are sent in conjunction with each other such that the advertising

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information can be displayed at substantially the same time that the control information was received or displaying the broadcast information at substantially the same time as the control information was received

Examiner further notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Perkes (2003/0122965) and Stockill (5,359,367) disclose controlling a computer via broadcasts.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran
Primary Examiner
6/20/2006